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DIESEL FUEL TAX REGULATIONS

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CALIFORNIA CODE OF REGULATIONS
Title 18. Public Revenues
Division 2. State Board of Equalization—Business Taxes
Chapter 3. Diesel Fuel Tax

Regulation 1411. HIGHWAY.

Reference: Revenue and Taxation Code Section 60016.

(a) ''Highway'' means a way or place, of whatever nature, within the exterior boundaries of the State including a way or place within a Federal area, publicly maintained and open to the use of the public for purposes of vehicular travel, including, but not limited to, the shoulder and rest stops, notwithstanding private participation in the maintenance of the way or place. It shall be presumed that a way or place is dedicated and accepted as a highway when it is recognized as a part of a maintained highway system by a public authority.

(b) A way or place within a national or state forest which is entirely privately maintained, or a road over which forest products are transported in a national or state forest privately constructed or maintained pursuant to an existing agreement with the public authority having jurisdiction thereof, shall not be considered a highway notwithstanding the fact that it may be declared by the public authority to be a part of its road system.

(c) A way or place is not a highway within the meaning of Revenue and Taxation Code Section 60016, during such times as it is closed by the governmental authority to the use of the public regardless of the purpose for which it is closed. A highway is open to the use of the public if vehicular travel is permitted although subject to traffic controls.

History: Adopted December 9, 1998, effective March 31, 1999.

Regulation 1413. TAX-PAID DIESEL FUEL AND EX-TAX DIESEL FUEL.

Reference: Revenue and Taxation Code Sections 60048.1, 60050, 60050.1, 60051, 60052, 60053, 60054, 60055, 60056, 60057, 60058, 60059, 60060, 60061, 60062, 60100, and 60106.

(a) ''Tax-paid diesel fuel'' is the gallonage of diesel fuel acquired with the California diesel fuel tax paid. An acquisition of diesel fuel will be considered tax-paid only if it can be supported by one of the following:

(1) A sales invoice or contract which clearly states that the diesel fuel tax is included in the invoice or contract and proof that the amount representing diesel fuel tax has been paid, or

(2) A diesel fuel purchase receipt showing that the amount paid for the fuel included the diesel fuel tax, or

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(3) Other documentation showing that the diesel fuel tax has been paid to the state.

(b) ''Ex-tax diesel fuel'' is the gallonage of diesel fuel acquired which is not tax-paid diesel fuel.

History: Adopted December 9, 1998, effective March 31, 1999.
Change without regulatory effect amending Note filed June 5, 2002.

Regulation 1420. SUPPLIER.

Reference: Revenue and Taxation Code Sections 60003, 60004, 60006, 60007, 60008, 60009, 60010, 60011, 60012, 60013, 60015, 60021, 60022, 60023, 60029, 60030, 60031, 60032, 60033, 60035, 60050, 60051, 60052, 60053, 60054, 60055, 60059, 60060, 60061, 60062, 60131, 60201, and 60203.

(a) RETURNS. All suppliers must prepare and file returns with the Board to report tax on diesel fuel. Returns are due at the end of the month following the calendar month in which the diesel fuel was removed, entered, or sold, unless the Board requires that a return be filed for a different period. A supplier acting in more than one capacity as a supplier (for example, as a blender and enterer, or throughputter and position holder) may be required to file more than one return. A terminal operator who also is a position holder in diesel fuel within the terminal or is jointly and severally liable for the tax is required to file both the terminal operator return and the supplier return. A throughputter who also is a position holder in diesel fuel within a terminal or sells/transfers diesel fuel within the bulk transfer/terminal system to a person who is not a licensed supplier is required to file both the throughputter return and the supplier return when the fuel is removed from the terminal rack or sold/transferred within the bulk transfer system.

(b) IMPOSITION OF TAX. Tax applies to each supplier as follows:

(1) BLENDER. A blender is required to pay the tax on the removal or sale of diesel fuel blended outside the bulk transfer/terminal system. The number of gallons of blended diesel fuel subject to the tax is the difference between the total number of gallons of blended diesel fuel removed or sold and the number of gallons of tax-paid diesel fuel used to produce the blended fuel.

(2) ENTERER. An enterer is required to pay the tax when the enterer imports diesel fuel into the state by means outside of the bulk transfer/terminal system. (Diesel fuel which enters the state by means of a vessel is considered to be within the bulk transfer/terminal system.) If there is no importer of record under federal customs law when the diesel fuel enters the state, the owner of the diesel fuel at the time it is brought into the state is the enterer and is liable for the tax.

(3) POSITION HOLDER. A position holder that holds an inventory position in the diesel fuel as reflected on the records of the terminal operator is required to pay the tax when the diesel fuel is removed from the terminal rack.

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(4) REFINER.

(A) A refiner is required to pay the tax when the diesel fuel is removed at the refinery rack.

(B) A refiner is also required to pay the tax when the removal of diesel fuel is by bulk transfer (e.g., transfer by pipeline or vessel) and the refiner or the owner of the diesel fuel immediately before the removal is not a licensed supplier.

(5) TERMINAL OPERATOR. A terminal operator is jointly and severally liable for and may be required to pay the tax when the diesel fuel is removed at the rack if both subsections (A) and (B) below apply, or if subsection (C) applies:

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(A) The position holder with respect to the diesel fuel is a person other than the terminal operator and is not a licensed supplier.

(B) The terminal operator is not a licensed supplier and either (i) does not have an unexpired notification certificate from the position holder as required by the Internal Revenue Service or (ii) has an unexpired notification certificate from the position holder, but has reason to believe or knows that any information in the certificate is false.

(C) The terminal operator provides any person with a bill of lading, shipping paper, or similar document which falsely indicates that the undyed or unmarked diesel fuel which is removed from the terminal is dyed or marked in accordance with the United States Environmental Protection Agency or the Internal Revenue Service requirements.

(6) THROUGHPUTTER. A throughputter is required to pay the tax when the throughputter transfers or sells diesel fuel within the bulk transfer/terminal system to a person who is not a licensed supplier.

History: Adopted December 9, 1998, effective March 31, 1999.

Regulation 1421. SUCCESSOR'S LIABILITY.

Reference: Revenue and Taxation Code Sections 60471, 60472, 60473, and 60474.

(a) DUTY TO WITHHOLD FROM THE PURCHASE PRICE. The requirement that a successor or purchaser of a business or stock of goods withhold a sufficient amount of the purchase price to cover the tax liability of the seller, arises only in the case of the purchase and sale of a business or stock of goods under a contract, which provides for the payment to be made to the seller or to a person designated by the seller of a purchase price consisting of money or property or the assumption of liabilities and only to the extent thereof, and does not arise in connection with other transfers of a business such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy.

(b) AMOUNTS TO WHICH LIABILITY EXTENDS. The liability of the successor or purchaser of a business or stock of goods extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against the former owner, which include taxes, interest thereon to the date of payment of the taxes, and penalties, including penalties for nonpayment of taxes, negligence, intentional disregard, fraud, or intent to evade the tax.

(c) RELEASE FROM OBLIGATION. The purchaser of the business or stock of goods will be released from further obligation to withhold from the purchase price if the purchaser obtains a certificate from the Board stating that no taxes, interest, or penalties are due from a predecessor. The purchaser will also be released if he or she

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makes a written request to the Board for a certificate and if the Board does not issue the certificate or mail to the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the certificate within 60 days after the later of the following dates:

(1) The date the Board receives a written request from the purchaser for a certificate.

(2) The date the former owner's records are made available for audit.

The certificate may be issued after the payment of all amounts due, including taxes, interest, and penalties, according to the records of the Board as of the date of the certificate, or after the payment of the amounts, including amounts not yet ascertained, is secured to the satisfaction of the Board.

(d) ENFORCEMENT OF OBLIGATION.

(1) The obligation is enforced by service of a notice of successor liability not later than three years after the date the Board receives written notice of the purchase of the business or stock of goods. The successor may petition the Board for reconsideration of the liability within 30 days after service. The liability becomes final, and the amount is due and payable, in the same manner as determinations and redeterminations of other diesel fuel tax liability.

(2) A successor may be relieved of any penalty included in the notice of successor liability regardless of when the notice was issued, if it is determined by the Board that failure by the successor to withhold a sufficient amount of the purchase price to cover the liability of the former owner was due to reasonable causes and circumstances beyond the control of the successor and occurred even though the successor exercised ordinary care and was not willfully negligent. A successor seeking relief of a penalty must file a written statement with the Board under penalty of perjury stating the facts upon which he or she bases the claim for relief.

(e) SEPARATE BUSINESS LOCATIONS. Where one person operates several business establishments, each at a separate location, each establishment is a separate ''business'' and has a separate ''stock of goods'' for purposes of determining the liability of a successor. A purchaser of the business or stock of goods of any such establishment is subject to liability as a successor with respect to that establishment even if he or she does not purchase the business or stock of goods of all the establishments.

(f) PURCHASE OF A PORTION OF A BUSINESS. A person who purchases a portion of a business or stock of goods may become liable as a successor as, for example, where the purchaser purchases substantially all of the business or stock of goods or where the business or stock of goods is purchased by two or more persons. In cases of doubt as to possible liability, the purchaser should obtain a certificate as provided in (c) above.

History: Adopted December 9, 1998, effective March 31, 1999.

Regulation 1422. RELIEF FROM LIABILITY.

Reference: Revenue and Taxation Code Sections 60208, 60209, 60210, 60211, 60304, 60310, 60311, and 60601.

(a) IN GENERAL. A person may be relieved from the liability for the payment of the diesel fuel tax, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) written advice given by the Board under the conditions set forth in subdivision (b) below, or

(2) written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term ''prior audit'' means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term ''written advice'' includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term ''written advice'' includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was

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examined, either in a sample or census (actual) review, such evidence will be considered ''written advice from the Board'' for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100%of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

History: Adopted December 9, 1998, effective March 31, 1999.

Regulation 1430. SHIPMENTS OUT OF STATE.

Reference: Revenue and Taxation Code Sections 60033, 60100, 60201, 60501–60512, 60521–60524, and 60604.

(a) EXPORTS OF EX-TAX DIESEL FUEL. The diesel fuel tax does not apply to the export of ex-tax diesel fuel. To qualify for an exemption from diesel fuel tax on the export of ex-tax diesel fuel, the supplier must claim the exemption on the return filed for the period in which the export occurred. Suppliers who erroneously pay tax on exports of ex-tax diesel fuel may file a claim for refund with the Board pursuant to Revenue and Taxation Code Sections 60521 through 60524 in order to obtain a refund of or credit for the amount of tax so paid.

(1) For purposes of this subdivision, ''export'' means the delivery or shipment from a point in this state to a point outside of the state when pursuant to the contract of sale the diesel fuel is shipped by a supplier by any of the following means:

(A) Facilities operated by the supplier.

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point.

(C) Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(2) For purposes of this subdivision, ''carrier'' means a person who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. An individual or firm does not become a ''carrier'' simply by being designated by a purchaser to receive and ship goods to a point outside this state.

(3) For purposes of this subdivision, ''forwarding agent'' means a person or firm regularly engaged in the business of preparing property for shipment or arranging for

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its shipment. An individual or firm does not become a "forwarding agent" simply by being designated by a purchaser to receive and ship goods to a point outside this state.

(b) EXPORTS OF TAX-PAID DIESEL FUEL. A person who exports diesel fuel on which tax has been paid may file a claim for refund with the Board pursuant to Revenue and Taxation Code Sections 60501 through 60512 in order to obtain a refund of the amount of tax so paid. For purposes of this subdivision, the seller is deemed to be the exporter of diesel fuel when the diesel fuel is delivered to an out-of-state location by facilities of the seller or by common carrier on behalf of the seller, and the purchaser is deemed to be the exporter of diesel fuel when the diesel fuel is delivered to an out-of-state location by facilities of the purchaser or by common carrier on behalf of the purchaser.

(1) All claims for refund of tax paid on exported diesel fuel must be supported by, and the claim for refund covering the export must contain the following:

(A) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant.

(B) The date the diesel fuel was purchased.

(C) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(D) A statement, which may appear on the invoice or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(E) The total amount of diesel fuel covered by the claim.

(F) A properly executed bill of lading or similar document furnishing proof of exportation by the claimant.

(2) In lieu of claiming a refund of tax for export of tax-paid diesel fuel, if the claimant is a supplier, the claimant may take a credit on its diesel fuel tax return for tax-paid diesel fuel when, pursuant to the contract of sale, the diesel fuel is required to be shipped and is shipped to a point outside of this state by the supplier claiming the credit by any of the means described in subdivision (a)(1) above. The credit must be claimed on the return for the month in which the export occurred. If the credit is not claimed on the return for the month in which the export occurred, the supplier must file a claim for refund pursuant to Revenue and Taxation Code Sections 60501 through 60512 and this subdivision in order to obtain a refund of the amount of taxes paid.

(c) DOCUMENTATION. Any person claiming an exemption, refund or credit under this regulation must retain documentation to support the obligation to deliver diesel fuel out of state and to support the actual delivery of diesel fuel at an out of state location. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, invoices and rack meter readings. The person claiming the exemption, refund or credit has the burden of proving that the diesel fuel was exported.

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(d) DIVERSION OF DIESEL FUEL. Diesel fuel is not exported if it is diverted in transit or for any reason it is not actually delivered outside of the state, regardless of documentary evidence held by the person exporting the diesel fuel respecting delivery of the diesel fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.

History: Adopted December 9, 1998, effective March 31, 1999.

Regulation 1431. DIESEL FUEL USED ON A FARM FOR FARMING PURPOSES.

Reference: Revenue and Taxation Code Sections 60036, 60037, 60038, 60058, 60100, 60151, 60501, 60502, and 60512.

The following provisions and definitions apply for purposes of the exemption from the backup tax pursuant to Revenue and Taxation Code Section 60100(a)(5)(A), and the refund of tax to the ultimate vendor pursuant to Revenue and Taxation Code Section 60502.

(a) The term ''used on a farm for farming purposes'' applies only to diesel fuel which is used (i) in carrying on a trade or business of farming, (ii) on a farm in California, and (iii) for farming purposes.

(b) A person will be considered to be engaged in the ''trade or business of farming'' if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or a tenant. A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming. A person who operates a garden plot, orchard, or farm for the primary purpose of growing produce for the person's own use is not considered to be engaged in the trade or business of farming. Generally, the operation of a farm does not constitute the carrying on of a trade or business if the farm is occupied by a person primarily for residential purposes or is used primarily for pleasure, such as for the entertainment of guests or as a hobby.

(c) The term ''farm'' is used in its ordinary and accepted sense, and generally means land used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock or poultry. The term ''livestock'' includes cattle, hogs, horses, mules, donkeys, sheep, goats, and captive fur-bearing animals. The term ''poultry'' includes chickens, turkeys, geese, ducks, and pigeons. Thus, a farm includes livestock, dairy, poultry, fish, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, orchards, feed yards for fattening cattle, and greenhouses and other similar structures used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures that are used primarily for purposes other than the raising of agricultural or horticultural commodities do not constitute farms, as for example, structures that are used primarily for the display, storage, fabrication, or sale of wreaths, corsages, and bouquets. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested.

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(d) Diesel fuel will be considered to be used for ''farming purposes'' when it is used on a farm by the owner, tenant, or operator of the farm in connection with the activities described in this subdivision. Diesel fuel will be considered to be used for ''farming purposes'' when it is used on a farm by a person other than the owner, tenant, or operator of the farm for any of the purposes described in subdivision (d)(1).

(1) Cultivating the soil, raising or harvesting any agricultural or horticultural commodity, or raising, shearing, feeding, caring for, training, or managing livestock, poultry, bees, or wildlife. Examples of operations which are considered to be operations for ''farming purposes'' within the meaning of this paragraph include plowing, seeding, fertilizing, weed killing, corn or cotton picking, threshing, combining, baling, silo filling, and chopping silage.

(2) Handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator produced more than one-half of the commodity which was so treated during the year covered by the exemption certificate described in Revenue and Taxation Code Section 60503 which supports the claim for refund.

(3) Planting, cultivating, caring for, or cutting of trees that is incidental to the farming operations of the farm on which it is performed or incidental to the farming operations of the owner, tenant, or operator of the farm, or in connection with the preparation (other than milling) of trees for market that is incidental to these farming operations. These operations include the felling of trees and cutting them into logs or firewood but do not include sawing logs into lumber, chipping, or other milling operations. Operations of the prescribed character will be considered incidental to farming operations only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a tree farmer or timber grower may not claim a refund under Revenue and Taxation Code Section 60502 with respect to diesel fuel used in connection with the trade or business of tree farming or timber growing.

(4) Operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment. The activities included are those which contribute in any way to the conduct of the farm as such, as distinguished from any other enterprise in which the owner, tenant, or operator may be engaged. Examples of included operations are clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, and painting farm buildings. Since the diesel fuel must be used by the owner, tenant, or operator of the farm to which the operations relate, diesel fuel used by an organization which contracts with a farmer to renovate his farm properties is not used for farming purposes. Diesel fuel used in a lawn mower for maintaining a lawn is not used for farming purposes.

(e) Diesel fuel used in connection with the following operations which may occur on a farm will not be considered to be used for farming purposes:

(1) Canning, freezing, packaging, or processing operations. Thus, for example, although diesel fuel used on a farm in connection with the production or harvesting

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of maple sap or oleoresin from a living tree is considered to be used for farming purposes under paragraph (d)(1) above, diesel fuel used in the processing of maple sap into maple syrup or maple sugar or used in the processing of oleoresin into gum spirits of turpentine or gum resin is not used for farming purposes, even though these processing operations are conducted on a farm.

(2) Processing operations which change a commodity from its raw or natural state, or operations performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation. For example, diesel fuel used for the extraction of juices from fruits or vegetables is used in a processing operation which changes the character of the fruits or vegetables from their raw or natural state and will not be considered to be used for ''farming purposes.''

(f) The diesel fuel tax does not apply to diesel fuel used in the operation of an implement of husbandry, truck or farm tractor which does not require registration under the Vehicle Code, which is used on a farm for farming purposes and which only incidentally is operated upon a highway in moving between farms or parts of farms which are in close proximity. For purposes of this subdivision, ''incidentally operated'' does not include the use of agricultural vehicles for the transportation of persons or property upon the highways in an operation which requires registration of the vehicle under the Vehicle Code.

History: Adopted December 9, 1998, effective March 31, 1999.

Regulation 1432. OTHER NONTAXABLE USES OF DIESEL FUEL IN A MOTOR VEHICLE.

Reference: Revenue and Taxation Code Sections 60016, 60019, 60026, 60501, and 60502.

(a) POWER TAKE-OFF EQUIPMENT.

(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off.

(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers,

Regulation 1432. (Contd.)

service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.

(b) OFF-HIGHWAY USE.

(1) A person may claim a refund for tax paid on diesel fuel used off the highway. ''Off the highway'' includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411.

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.

(3) As used in subdivision (2), ''incidentally operated'' does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the vehicle under the Vehicle Code.

(c) REFUNDS. Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel in power take-off equipment or off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund may use any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes. It is the responsibility of the person claiming the refund to document and support the amount claimed.

(d) IDLE TIME. Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling, and no refunds will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway. If the vehicle is idling on the highway while power take-off equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the power take-off equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling.

History: Adopted December 9, 1998, effective March 31, 1999.

Regulation 1433. REFUND OF TAX ON DIESEL FUEL LOST IN THE COURSE OF HANDLING, TRANSPORTATION, OR STORAGE.

Reference: Revenue and Taxation Code Sections 60501–60512.

(a) The Board will refund the tax paid on diesel fuel which is lost in the course of handling, transportation or storage provided that:

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(1) The tax-paid diesel fuel was lost under circumstances beyond the claimant's control such as fire, flood, accidental spillage or leakage, or natural catastrophe; or

(2) The tax-paid diesel fuel was lost through the accidental conversion of undyed diesel fuel to dyed diesel fuel; or

(3) The tax-paid diesel fuel was lost through the intentional conversion of undyed diesel fuel to dyed diesel fuel in the ordinary course of handling (such as purging hoses).

(b) Tax-paid diesel fuel will qualify as lost under subsections (a)(2) or (3) above only if the fuel that was converted from undyed fuel to dyed fuel is sold as dyed diesel fuel.

(c) No refund will be made based on losses of diesel fuel which occur due to evaporation or shrinkage.

(d) A person who loses fuel in the course of handling, transportation or storage may file a claim for refund with the Board pursuant to Revenue and Taxation Code Sections 60501 through 60512 in order to obtain a refund of the diesel fuel tax paid on the lost fuel.

History: Adopted December 9, 1998, effective March 31, 1999.

Regulation 1434. SALES OF DIESEL FUEL TO THE UNITED STATES AND ITS AGENCIES AND INSTRUMENTALITIES.

Reference: Sections 60100, 60501, 60502 and 60508 of the Revenue and Taxation Code.

(a) IN GENERAL. The diesel fuel tax does not apply to the sale of diesel fuel to the United States and its agencies and instrumentalities. Examples of the United States and its agencies or instrumentalities include, but are not limited to, the American Red Cross, U.S. Postal Service, branches of the armed services, military exchanges, and agencies such as the USDA Forest Service and the Department of Housing and Urban Development.

(b) SALES OF EX-TAX DIESEL FUEL. A supplier licensed under the Diesel Fuel Tax Law that makes sales of ex-tax diesel fuel to the United States and its agencies and instrumentalities, may claim an exemption on its diesel fuel tax return.

(c) SALES OF TAX-PAID DIESEL FUEL.

(1) A supplier licensed under the Diesel Fuel Tax Law that makes sales of tax-paid diesel fuel to the United States and its agencies and instrumentalities may claim a credit on its diesel fuel tax return. The tax-paid fuel may be sold in bulk or through any company-owned retail service station.

Regulation 1434. (Contd.)

(2) A person licensed as an ultimate vendor under the Diesel Fuel Tax Law who makes a sale of tax-paid fuel to the United States and its agencies and instrumentalities may claim a refund on its diesel fuel tax claim for refund referenced in subdivision (d).

(3) A diesel fuel seller not required to be licensed under the Diesel Fuel Tax Law, including, but not limited to, a wholesaler, access card issuer or service station operator may file a claim for refund of tax on its sales of tax-paid diesel fuel to the United States and its agencies and instrumentalities as to those gallons of diesel fuel it sells ex-tax to the United States and its agencies and instrumentalities. The claim for refund may only be filed by the person that owned the tax-paid diesel fuel and directly sold the tax-paid diesel fuel to the United States and its agencies and instrumentalities.

''Access card issuer'' means a person that issues to a customer an access card or code or similar access device which entitles the customer to obtain fuel owned by the access card issuer at participating fuel dispensing sites. As used in this regulation ''fuel owned by the access card issuer'' means fuel owned by the access card issuer at its own fuel dispensing site or fuel purchased by the access card issuer from an operator of a fuel dispensing site at the time that the fuel is dispensed to the United States and its agencies and instrumentalities.

(d) CONTENTS OF CLAIM FOR REFUND. A claim for refund filed by a diesel fuel seller who is not an ultimate vendor shall contain the information required by Revenue and Taxation Code § 60501(b). A claim for refund filed by an ultimate vendor shall contain the information required by Revenue and Taxation Code § 60502(c).

(e) DOCUMENTATION FOR BULK TRANSACTIONS. Any person claiming an exemption, credit, or refund for bulk sales of diesel fuel to the United States and its agencies and instrumentalities, must retain supporting documentation. Documentation may include, but is not limited to:

(1) A copy of the United States government purchase order or other documentation authorizing the purchase of the diesel fuel.

(2) A copy of the billing invoice or other documents identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the invoice billing date, the invoice billing number, the number of diesel fuel gallons sold to the United States and its agencies and instrumentalities and a clear indication that no diesel fuel tax reimbursement was collected from the United States and its agencies and instrumentalities.

(3) Documentation showing that the diesel fuel in question was acquired ex-tax by a licensed supplier claiming the exemption.

(4) Documentation showing that the diesel fuel in question was acquired tax-paid by a person claiming the credit or refund.

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(f) DOCUMENTATION FOR NON-BULK TRANSACTIONS. Any person claiming a credit or filing a claim for refund on retail sales of tax-paid fuel sold in non-bulk quantities, including credit card sales to the United States and its agencies and instrumentalities, must retain supporting documentation. Documentation may include, but is not limited to:

(1) A copy of the billing invoice or other documentation identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the invoice billing date, the invoice billing number, the number of diesel fuel gallons sold to the United States and its agencies and instrumentalities and a clear indication that no diesel fuel tax reimbursement was collected from the United States and its agencies and instrumentalities.

(2) Documentation showing that the diesel fuel in question was acquired tax-paid by a person claiming the credit or refund.

(3) A copy of the credit card receipt or listing of credit card transactions provided by the card processor, identifying the United States and its agencies and instrumentalities as the purchaser of the diesel fuel, the date of the transaction, the record number of the receipt, and the number of diesel fuel gallons sold to the purchaser.

(4) A copy of the charge back of the tax to the retailer by the credit card processor.

History: Adopted February 6, 2002, effective June 12, 2002.

Regulation 1470. RECORDS.

Reference: Revenue and Taxation Code Sections 60201, 60503, 60604, 60605, and 60606.

(a) DEFINITIONS.

(1) ''Database Management System'' means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) ''Electronic data interchange'' or ''EDI technology'' means the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) ''Hardcopy'' means any document, record, report or other data maintained in a paper format.

(4) ''Machine-sensible record'' means a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(5) ''Taxpayer'' means every interstate user, supplier, exempt bus operator, government entity, ultimate vendor, highway vehicle operator, train operator, and every person dealing in, removing, transporting, or storing diesel fuel in this state.

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(b) GENERAL.

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct diesel fuel tax liability and all records necessary for the proper completion of diesel fuel tax returns. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 60604, 60605, and 60606.

(c) MACHINE-SENSIBLE RECORDS.

(1) GENERAL.

(A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

(B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) ELECTRONIC DATA INTERCHANGE REQUIREMENTS.

(A) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

(B) The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and

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integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) ELECTRONIC DATA PROCESSING SYSTEMS REQUIREMENTS. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) BUSINESS PROCESS INFORMATION.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;

2. the internal controls used to ensure accurate and reliable processing and;

3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:

1. record formats or layouts;

2. filed definitions (including the meaning of all codes used to represent information);

3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on

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the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) ACCESS TO MACHINE-SENSIBLE RECORDS.

(1) The manner in which the Board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

(D) The taxpayer and the Board may agree on other means of providing access to the machine-sensible records.

(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

(g) HARDCOPY RECORDS.

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax

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liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) ALTERNATIVE STORAGE MEDIA.

(1) For purposes of storage and retention, taxpayer may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provide the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm and microfiche systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) RECORD RETENTION—TIME PERIOD. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

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(j) RECORD RETENTION LIMITATION AGREEMENTS.

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement, which shall;

1. document understandings reached with the Board, which may include, but are not limited to, any one or more of the following issues:

   a. the conversion of files created on an obsolete computer system;

   b. restoration of lost or damaged files and the actions to be taken;

   c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an ''examination of records'' pursuant to Revenue and Taxation Code Section 60606.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax

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system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The Board shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) FAILURE TO MAINTAIN RECORDS. Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

(*l*) SPECIFIC APPLICATIONS.

(1) VENDOR'S RECORDS. A vendor shall maintain complete records of all sales or other dispositions including exemption certificates, self consumed fuel, inventories, purchases, receipts, and tank gaugings or meter readings, of diesel and any other fuel the use of which is subject to the diesel fuel tax.

(2) VENDOR'S SALES INVOICES. The vendor shall prepare a serially numbered invoice for each sale of fuel whether the fuel is sold for use in motor vehicles or for other uses. A single invoice covering multiple deliveries of fuel made during a period of time not to exceed a calendar month shall constitute an invoice for each sale. If the multiple delivery invoice includes tax-exempt deliveries with respect to which the vendor is excused from collecting the tax, and deliveries upon which the tax is required to be collected, the invoice shall contain or be accompanied by a statement showing separately the deliveries and gallonage upon which the tax is collected and the tax-exempt deliveries and gallonage. The invoice shall be delivered to the purchaser, and a copy thereof shall be retained by the vendor.

A sales invoice shall contain the following information:

(A) The name and address of the vendor.

(B) The name of the purchaser with respect to:

(C) The date of sale.

(D) The number of gallons of fuel sold, the price per gallon and the total amount of the sale.

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(E) The amount of the diesel fuel tax collected; however, the amount of the tax collected need not be separately stated if the invoice bears the notation that the price includes the tax.

(F) A statement that there is no evidence of dye.

(3) Receipt for Tax Paid to Vendor. The sales invoice shall upon payment by the purchaser constitute a receipt for the amount of diesel fuel tax included therein collected by the vendor.

(4) User's Records. The user shall maintain complete records of self consumed fuel, inventories, purchases, receipts, and tank gaugings or meter readings, of diesel and any other fuel the use of which is subject to the diesel fuel tax.

(5) User's Invoices. Users of fuel subject to the tax shall obtain from the vendor of the fuel and retain in their files an invoice for each delivery of such fuel into the fuel tank or tanks of each vehicle operated by them and for each delivery into their bulk storage tank or tanks. These invoices shall set forth the information specified in subsection (l)(2) of this regulation and shall be filed or identified in a systematic manner so that they may readily be traced into their purchase or expense records and into their returns to the Board.

Users should keep as part of their records a detail of figures upon which are based the totals set forth on their returns to the Board. All individual invoices supporting charge accounts which include purchases of fuel shall be retained by the user in such manner as to enable the representatives of the Board to establish the identity of all the merchandise or service included in the total charge and the specific gallonage of fuel purchased.

History: Adopted December 9, 1998, effective March 31, 1999.